United States Court of Appeals

for the Second Circuit

PETITIONER'S REPLY BRIEF

76-4076

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

NAZARETH REGIONAL HIGH SCHOOL,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION TO REVIEW AND CROSS-APPLICATION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD IN CASE NO. 222 NLRB NO. 156

REPLY BRIEF ON BEHALF OF PETITIONER NAZARETH REGIONAL HIGH SCHOOL

CLIFTON, BUDD, BURKE & DE MARIA
420 Lexington Avenue
New York, N. Y. 10017
Attorneys for Petitioner

KEVIN J. MCGILL
of Counsel

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Preliminary Statement

As its Decision and Order, the Board's brief to the Court neglects to address several of the prime legal issues raised by the facts of this unusual case, e.g., (1) the Union's recognition demand for supervisors, (2) the inconsistency in the Board's decision concerning the date when the duty to bargain attached, (3) the implications of the Union's refusal to permit resignations in the context of Nazareth's good faith doubt of majority status. Also, its treatment of Petitioner's good faith doubt is particularly disturbing because it perpetuates the unsupported finding that Nazareth's clear intent "was to take advantage of the occasion of the change-over to

to get rid of the Union" (BR 31). The fact is that the Board has labored to give the worst possible interpretation to facially neutral statements and occurrences while requiring Nazareth to rebut "every possible inference consistent with discrimination." NLRB v. River Togs, Inc., 382 F.2d 198 (2nd Cir. 1967).

Nazareth does not consider the issue of good faith doubt its "principal defense" (BR 17). Nazareth relies equally on all its arguments and will not submit to the Board's characterization of the supervisory issues as "other defenses".

I. THE BOARD'S TREATMENT OF SUPERVISORY PARTICIPATION IN THE UNION HIERARCHY FALLS SHORT OF THE MARK BECAUSE IT FAILS TO TAKE ACCOUNT OF THE UNION'S SUPERVISORY POSTURE THROUGHOUT THE PERIOD OF TIME PRECEDING THE HEARING.

The "central fact" (70a) upon which the Board relied in finding an obligation to bargain on March 25, 1974, was that on that date "Nazareth expressed its intention to retain all of the former Hald teachers." On June 20, 1974, the Union submitted another demand for recognition for "all the full time permanent lay teachers at this school" (89a). And yet on both occasions and continuing up till June 3, 1975, (103a, 114a), the Union had statutory supervisors administering at the highest levels. Supervisor Monroe was the delegate of the school; its Number 1 unioneer. Under these circumstances, it is illogical for the Board to claim that Nazareth violated the Act by refusing to recognize and bargain with the Union on and after these dates since the Union was at all times dominated by supervisors. In addition, the Union never relinquished its claim of representation for department chairmen and coordinators until the ALJ insisted, midway through the hearing, that the charging party reveal its position regarding their alleged supervisory status. Wholly apart from the issue of good faith doubt, to have recognized the Union would have involved Nazareth in bargaining with its own representatives and also in the interference with the administration and control of a labor organization in violation of Section 8(a)(2) of the Act.

The Board cites International Paper Co., 172 NLRB 133 and the ensuing line of cases (BR 23) for the proposition that supervisory membership, by itself, does not spell supervisory domination of a labor organization and that it is of no consequence that supervisors of employers other than the one involved occupied positions of authority in the Union hierarchy. But Monroe was an employee of Nazareth and was Union treasurer and chief delegate of the school until June 3, 1975, when he resigned during the middle of the hearing. There is "unmistakable" proof on this record that he dominated and controlled the administration of the Union at Nazareth. This is more than an instance of supervisory "solicitation of rank and file support" (BR 22). The incontrovertible facts disclose that Monroe was solely responsible for the prevention of union resignations, an unfair labor practice in and of itself. NLRB v. Granite State Joint Board, 409 U.S. 213; Machinists Lodge 405 v. NLRB, 412 U.S. 84; Autoworkers, Local No. 647 (General Electric Co.), 197 NLRB 608, 609 (enforcement of unreasonable limitation on right to resign from union found violative of Section 8(b)(1)(A) of the Act.). With this in mind, the ALJ referred to the union's claim of uncoerced majority as "an absurdity" (37a).

This supervisory participation of certain persons in the union hierarchy is precisely the type of issue that could have been raised in a non-adversary representation proceeding

had the Board not dismissed the pre-complaint RM petition filed by Nazareth in January, 1975 (125a). Instead, the Board chose to litigate the matter knowing full well that Kranepool and Monroe were Union officers, delegates at their respective schools and statutory supervisors at the same time. What the Board in effect argues is that Nazareth should have known on March 25, 1974, and June 20, 1974, that Kranepool and Monroe would resign their Union office and delegate positions on June 3, 1975. We suggest that if anyone is responsible for a "post hoc rationalization" (BR 20), it is the Board, not Nazareth. It is one thing for the Board to hold a labor organization qualified to represent employees based upon its promise in a representation proceeding to pursue goals and objectives set by members of the unit. International Paper Co., 172 NLRB at 133. It is quite another thing for the Board to hold an employer in violation of law because it refused to recognize a supervisory dominated labor organization at the time the demand was made.

In addition, the Board has not reckoned with the Union's improper demand for recognition as representative of the department chairmen and coordinators. All that can be gathered is that the Board feels Nazareth raised this defense too late. However, the Board's Rules and Regulations do not require the pleading of affirmative defenses [29 CFR 102.20]. Under

the Board's machinery, the hearing is the proper place and time for these defenses to be raised. Colecraft Manufacturing Co., Inc., v. NLRB, 385 F.2d 998 (BR 24), does not stand for the proposition for which the Board cites it. That case dealt with the doctrine of "insubstantial variance" and this Court held, contrary to the Board's view, that the union's demand for the inclusion of 6 co-op students in a production and maintenance bargaining unit in fact rendered the demand improper and consequently, no violation of Section 8(a)(5) occurred. Nazareth does not contend that the Union's demand for supervisors was merely an "insubstantial variance". Rather, it was a patently impermissible demand and one that merited no response. */

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*/ On March 17, 1974, the date of the initial demand, Nazareth had not even begun to recruit its faculty. On March 25, 1974, the date of the second demand, the same situation prevailed. On May 28, 1974 (more than three months prior to the commencement of operations), the Union filed unfair labor practice charges against the school. On June 20, 1974, still substantially before the opening of the school, the third demand was received. All of these demands for recognition occurred prior to the commencement of operations and prior to the date on which the Board found that the duty to bargain matured. Thus, it is apparent that there was no duty in reason or in law to respond to any of these demands for recognition, since they all included statutory supervisors and all preceded the commencement of operations. The fact that Nazareth hired a majority of its staff from the old school does not make it perfectly clear that it had intended to do so on March 25, 1974. The Board erred "by focusing on facts only later proved to be true". Harding Glass Industries v. NLRB, 533 F.2d, 1065, 1071, (8th Cir. 1976).

In any event, a recent NLRB decision puts the question to rest. In Enclosure Corp., 225 NLRB No. 82, the Board held that the issue of confidential status of two employees whom the employer was alleged to have unlawfully laid off was not improperly and untimely raised, even though the employer's assertion that the two employees were confidential employees was made for the first time in its closing argument at the hearing, absent a showing that the General Counsel was prejudiced by the timing of the assertion. Here, Nazareth filed a petition five months before the hearing - a procedure specifically endorsed by the Courts in these circumstances. Linden Lumber Division, Summer & Co., 419 U.S. 301; Colecraft, supra, Harding Glass, supra. In Harding, the Court also rejected the same claim advanced by the Board in this case - that the Union's impermissible unit demand cannot be used as a valid defense by Petitioner.

II. IN ASSESSING NAZARETH'S GOOD FAITH DOUBT, THE BOARD FAILED TO TAKE INTO ACCOUNT THE RADICAL RESTRUCTURING OF THE BARGAINING UNIT AS WELL AS INCONTESTABLE EVIDENCE OF EMPLOYEE DISAFFECTION WITH THE UNION.

It is well settled that the existence of a prior contract, lawful on its face, raises a dual presumption of majority -- a presumption that the union was the majority representative at the time the contract was executed, and a presumption that its majority continued at least through the life of the contract. Shamrock Dairy, Inc., 119 NLRB 998, 1002 and 124 NLRB 494, 495-6, enforced 280 F.2d 665 (D.C. Cir. 1960). The presumption continues after the expiration of the contract and is equally applicable to successor employers. Barrington Plaza, 185 NLRB 962, 963. But here the contract is not lawful on its face because statutory supervisors are included in the bargaining unit. We are unable to perceive how the Hald contract can provide the basis for a presumption of continued majority when the unit contains management's own representatives.

Assuming, however, that the supervisory taint were not present in this case, the presumption would have to fail on other grounds because of the radical restructuring of the bargaining unit. Nazareth does not assert a mere dimunition in the size of the unit. Rather, it is submitted that the

new unit bears no resemblance whatever to the Hald unit because of the substantial reduction in size and the carving out of department chairmen and coordinators. The new unit is different in both scope and composition. Successorship as found in Burns, appears likely only "where the bargaining unit remains unchanged." 406 U.S. at 281.

There is conflict among the circuits and the Board itself regarding the question of whether successorship can obtain where there has been a substantial dimunition in the size of the bargaining unit from a large or multi-location unit to a smaller or single location unit. Compare Boston Needham Industrial Cleaning, 526 F.2d 74, 76-77 (1st Cir. 1975); Zim's Foodliner, Inc. v. NLRB, 495 F.2d 1131, 1138-1142 (7th Cir. 1974) with NLRB v. Richard W. Kaase Co., 346 F.2d 24 (6th Cir. 1965); International Association of Machinists, 414 F.2d 1135 (D.C. Cir. 1969); International Association of Machinists and Aerospace Workers, AFL-CIO v. NLRB, 489 F.2d 680, Ftnt. 2; NLRB v. Alamo White Truck Service, Inc., 273 F.2d 238 (5th Cir. 1959); Atlantic Technical Services Corp., 202 NLRB 169; United States Molded Shapes, 141 NLRB 357; American Conceret Pipe of Hawaii, Inc., 128 NLRB 720. It should be noted that in Zim's Foodliner, supra, the Court took pains to point out that the grocery employees had been represented by the union prior to the establishment of the 11-store predecessor unit whereas in the instant case

there is no such evidence of pre-multi-school unit representation. Perhaps more importantly, none of the cases cited by the Board on this point involve restructuring of the bargaining unit in both scope and composition.

Lastly, the Board's rejection of the events and occurrences relied upon by Nazareth as the basis of its good faith doubt is inconsistent with the facts and conclusions in the lead case of Celanese Corp. of America, 95 NLRB 664, where the crossing of a picket line by a substantial number of employees and the restructuring of the bargaining unit were regarded as objective criteria supporting a good faith doubt of majority status. The June 3, 1974 letter rebuking the union and the October 18, 1974, RD petition were certainly supportable of a good faith doubt. NLRB v. Frank Gallaro and Joseph Gallaro d/b/a Gallaro Bros., 419 F.2d 97 (2nd Cir. 1969). The fact that the petition and letter were circulated in part by supervisors is not unlawful because those same supervisors were covered by the prior contract and included in the Union's unit demand. Montgomery Ward & Co., Inc., 115 NLRB 645, enf'd 242 F.2d 497 (2nd Cir. 1957), cert. den., 355 U.S. 829. Under all these circumstances, it is apparent that the Board's finding that Nazareth violated Section 8(a)(5) of the Act is not based upon substantial evidence. The correct procedure would have been to hold a representation hearing on the issue

of the Union's capacity to represent employees under the Act and also on the supervisory status of the department chairman and coordinators. Once these issues were resolved, an immediate election should have been held, if warranted. See generally, NLRB v. Metropolitan Life Insurance Co., 405 F.2d 1169, (2nd Cir. 1968).

III. THE BOARD'S TREATMENT OF NAZARETH'S DEFENSE CONCERNING THE ESTABLISHMENT OF INITIAL TERMS AND CONDITIONS OF EMPLOYMENT IS BASED UPON A MISAPPLICATION OF ITS CASE LAW AND ITS RULES AND REGULATIONS.

The Board contends that Nazareth failed to take exception to the "finding" of the ALJ that "were the Complaint otherwise proved, I would find Nazareth Regional illegally refused to bargain as far back as March, 1974." (Emphasis supplied.) Section 102.46(b) of the Board's Rules and Regulations states:

> (b) Each exception (1) shall set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken; (2) shall identify that part of the administrative law judge's decision to which objection is made; (3) shall designate by precise citation of page the portions of the record relied on; and (4) shall state the grounds for the exceptions and shall include the citation of authorities unless set forth in a supporting brief. Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

There is no requirement that a respondent except to what the ALJ would have found or might have found, but only what he did find. Nazareth did not except on the ground that there was no complaint allegation because there was nothing to except to. Furthermore, if anyone's stated exception did not meet the Board's requirements of specificity it was that of the

General Counsel, not Nazareth. The Board states that "Nazareth's opponent was challenging the Judge's holding in this regard" (BR 16). A glance at the exceptions of the General Counsel reveals that he challenged the ALJ's "dismissal of the allegations of violations of Section 8(a)(5) against all respondents " (52a). The Board argues to this Court that as a result of this exception, Nazareth was on notice that its initial terms and conditions of employment were under attack, even though there had been no complaint allegation in this regard, the General Counsel had disclaimed any such attack on the record (TR 386) */ and the issue had not been litigated at the hearing. The litigation surrounding the March 25, 1974 phone call between Keenan and Gordon went to the issue of whether Nazareth had failed and refused to recognize the Union as of that date as the complaint alleged (10-12a), not whether Nazareth unlawfully set initial terms and conditions of employment, as it did not allege. A respondent should not be required to guess what it is charged with. If a finding of the Board merits separate and distinct status within the confines of a remedial order (79a), then it merits clearcut explication in the complaint.

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*/ In this regard see Pur O Sil, Inc., 211 NLRB 333, where the Board reversed the ALJ on this ground, and NLRB v. United Aircraft Corp., 490 F.2d 1105, (2nd Cir. 1973), where this Court denied enforcement to a Board order because there had been no complaint language alleging a violation.

Lastly, the Board's statement that "the teachers were misled by 'tacit inference' into believing they would be retained without change in the conditions of employment" (BR 15) is a wholly new claim raised for the first time in the Board's brief and one which is unsupported by the record evidence. Instead of addressing itself to any conduct of Nazareth possibly supportive of its "tacit inference" */ claim, the Board turns the tables and places the burden on Nazareth to show that it did not mislead the teachers. This is a clear perversion of the standards laid down by the Board in Spruce Up Corp., 209 NLRB 194 (1974). The Board would have Nazareth announce "the likelihood of changes" (BR 15) prior to the formulation of changes if it is to avoid the "perfectly clear" caveat to Burns, supra, 406 U.S. at 294, 295. In this way, a very narrowly drawn exception to a general rule becomes the rule itself.

If it was "perfectly clear" that Nazareth intended to "retain all the employees in the unit" as of March 25, 1974, it is difficult to understand why only President Gordon and "probably" Treasurer Monroe knew about it (BR 15). Most of the teachers ultimately employed by Nazareth were not so advised until the last days of their Hald employment;

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*/ For standards governing Board-drawn evidentiary inferences see NLRB v. Martin A. Gleason, Inc., 534 F.2d 466, 474, 1976) where this Court found the Board's conclusions, based on such inferences, not adequately supported by the record and inconsistent with applicable law. These judicial standards are also applicable to the Vitelli episode (67a), (BR 29) which typifies the Board's efforts to locate unlawful motivation in the record. See also NLRB v. Milk Drivers and Dairy Employees, Loc. 338, 531 F. 2d 1162, 116 (2nd Cir. 1976).

others were informed during the summer. Employees who testified for and against Nazareth stated that the teachers were unsure of their status up until the closing of the old school (TR 471-94), (TR 1046). If it was perfectly clear to Gordon and Monroe as of March 25, 1974, that the new school intended to hire all the employees in the unit (assuming "unit" can be restricted to a single school), reason dictates that they would have passed the word to those most directly concerned. The only logical conclusion is that the credibility resolution adopted by the Board as "the central fact" is incorrect and not based upon substantial evidence in the record as a whole.

IV. THE BOARD'S EXCLUSION OF RELIGIOUS FACULTY FROM THE BARGAINING UNIT IS AN ABUSE OF DISCRETION.

The exclusion of religious faculty from the bargaining unit is not based upon evidence in the record. The facts show that the sole difference between the religious and lay faculty in terms of community of interest are the disparate wages received by each group. In every other respect the two are exactly the same. It has long been held that reasonableness necessarily implies that the Board has given due consideration to all relevant factors, not just one. NLRB v. Jones & Laughlin Steel Corp., 331 U.S. 416, 422-23. The opinion of Judge Wisdom in Shoreline Enterprises v. NLRB, 262 F.2d 933, (5th Cir. 1959) gives voice to Nazareth's concern that religious faculty have been excluded from the unit without fair consideration given to their case:

> The National Labor Relations Board is not just an umpire to referee a game between an employer and a union. It is alsc a guardian of individual employees. Their voice, though still and small, commands a hearing. Id at 944.

Judge Wisdom further observed that the Board has ruled employees who worked as little as 20% of their time within the unit are entitled to vote, citing Broderick Co., 99 NLRB

385. That the bargaining unit was to include production workers was regarded as "the key fact":

> Every employee performing substantial duties in production should have had a chance to vote. Id at 944.

In the present case, the religious faculty spend all their time performing the exact same functions as the lay faculty.

In St. Anthony's Center, 220 NLRB No. 139, the Board took the reverse position and included a religious faculty member in the bargaining unit under the exact same circumstances as present in this case, except that there the wages between lay and religious were the same. With respect to the Board's claim that the exclusion of religious is also supported by the history of successful bargaining between the Union and the Hald Association (BR 26), it should be noted that Nazareth is not a member of the Hald Association and further, that Footnote 3 in the Board's brief casts the "successful bargaining history" */ into serious doubt.

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*/ It is also apparent that the prior bargaining involved the participation of statutory supervisors within the unit. In Henry M. Hald School Association and Lay Faculty Association, Local 1261, Case No. 29-UC-59, decided after the hearing in the instant case, the Board's Regional Director found upon a fully developed record that Hald department chairmen were supervisors within the meaning of Section 2(11) of the Act.

The arbitrary exclusion of religious by the Board denies these employees "the fullest freedom in exercising the rights guaranteed by [the] Act", as provided by Section 9(b), 29 U.S.C. Section 159(b). Indeed, the record reveals that these employees are not even eligible for membership in the Union (105a). Serious questions arise as to the bona fides of any labor organization which is administered by supervisors and which admits any supervisor "below the rank of vice principal" to membership, but which excludes from membership any person who is a member of a religious community.

V. THE FINDING OF THE BOARD THAT JAMES MIRRIONE WAS DISCHARGED FOR HIS UNION ACTIVITIES IS NOT BASED UPON SUBSTANTIAL EVIDENCE.

Contrary to the position of the Board, there is no record evidence that Mirrione engaged in any Union activity apart from the 35 strikers who participated in picketing in October, 1973. The ALJ specifically found that there was no record evidence that Nazareth was at any time aware either that Mirrione was elected alternate delegate or that he drafted strike literature (44a). These occurrences were never publicized in any way. Yet the Board based its decision, in part, upon these activities without even bothering to comment upon the ALJ's contrary finding.

The events surrounding the mini-marathon are supportive of Nazareth's position rather than the Board's. Mirrione could have been summarily and lawfully discharged by Burke for his attempts to provoke a partial strike on this occasion. Far-Best, Inc., 181 NLRB 211, 214 (employee refusal to perform work during regular hours and at regular pay rates held unprotected); Stop & Shop, 161 NLRB 75, 79, enfd. sub nom Machaby v. NLRB, 377 F.2d 59 (1st Cir1967), (incidents relied upon by trial examiner to demonstrate hostility to partial striker occurring five months to one year prior to discharge, rejected

by the Board). Thus it is unfair for the Board to refer to Burke's admonition to Mirrione as further evidencing "the deliberate steps which the school had taken to discourage union activity" (72a). If Burke had wanted to retaliate against Mirrione because of his union membership he could have done it with impunity on March 28, 1974 by discharging him for unprotected activity.

It is equally unfair of the Board to infer anti-union animus from Burke's rejection of the faculty applications which appeared on the Union's letterhead. The record positively discloses that these applications were rejected because it was not clear either to Burke or Keenan whether those employees were making application to the new school governed by the lay board of trustees (129a) (TR 53). Here again, if Nazareth was of a mind to discriminate against anyone for union activities it could have declined to respond to the group submission and refused employment to the ten employees on the ground that no application was made.

The worst example of the Board's lack of objectivity is its finding of probity in Burke's testimony that "subsequent to the strike I became more convinced that I had made a mistake by taking him back before the strike" (75a). The entire thrust

of Burke's testimony was that Mirrione's conduct after the strike, including his disparagement of the sacramentality of marriage, and his sanctioning of abortion because it was legal (132a), combined with requests by parents to have their sons transferred from his class, convinced Burke that he had made a mistake by taking him back before the strike. The Board's position appears to be that the mere mention of the word "strike" by a Petitioner shows anti-union animus. It has persistently ignored that Nazareth offered employment to nearly all of the active strikers and even promoted some of them to supervisory positions in the new school. There is no record evidence that Mirrione was singled out for discrimination because of union activities. Rather the facts show that Nazareth considered Mirrione unqualified to teach religion in the new institution. The Board seeks to impose a person who ridicules Catholic doctrine (45-46a) upon a Catholic school and set him up as a teacher of religion.

Finally, the standard of judicial review asserted by the Board is not altogether free of doubt. The Board states that as long as union activity is "a factor" */ in the decision, a violation is made out (BR 30-31). In NLRB v. Fibers International Corp., 439 F.2d 1311, (1st Cir. 1971) the Court stated:

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*/ In its Decision and Order the Board found that Nazareth's decision not to hire Mirrione was "motivated in substantial part by his union activities" (75a) (emphasis supplied).

"the Board has the burden of making a clear showing that the employer's dominant motive was not a proper business one, but union animus."

This standard was specifically held to be in conformity with the standards adopted by this Court. There has been no showing on this record, let alone a "clear showing" that Nazareth's dominant motive in rejecting Mirrione was his union membership or activities.

Finally, the Board errs when it states that the charge filed on December 23, 1973 was timely because of the new applications made by Mirrione to the school in September, 1974. If this were true the statute of limitations would be extended in perpetuity by the persistent "re-application" of the charging party. This procedural strategem was rejected by the Board in United Slate, Tile and Composition Roofers, 202 NLRB 851, when it was held that a charging party may not nullify the effects of the 10(b) bar by reapplying and then filing a charge based upon Respondent's more recent action, since this action is "merely a reaffirmation of Respondent's earlier, time-barred conduct". Mirrione was denied employment on June 13, 1974 and the General Counsel's complaint so stated. It was at that time that the statute began to run. Reapplication does not start the statute running anew.

The alternate theory that the June 13, 1976 refusal is covered by the May 28, 1974 charge (on this theory the Board views June 13, 1974 as the effective date of notice) is also incorrect since that charge alleged a wholesale discharge of the faculty by Petitioner as the alter-ego of the Diocese (1a-2a). The General Counsel refused to issue complaint on that theory. Thus the May 28, 1974 charge is not "closely related" to the allegations set forth in the complaint which charged Petitioner, as a successor, with having refused employment to Mirrione on June 13, 1974. Regal China Corp., 195 NLRB 585, 590; Hunter Saw Div. of Asko, Inc., 202 NLRB 330, ftnt. 1. Furthermore, if the May 28, 1974 charge was closely related to the subsequent refusal to hire Mirrione, there would not appear to have been any reason to file the December 23, 1974 charge which specifically named Mirrione.

CONCLUSION

For all the reasons set forth above, Nazareth respectfully requests that its Petition for Review be granted and the Board's Cross-Petition for Enforcement be denied in its entirety.

CLIFTON BUDD BURKE & DeMARIA
Attorneys for Petitioner
Nazareth Regional High School
420 Lexington Avenue
New York, New York 10017

Of Counsel:

Kevin J. McGill
October, 1976

AFFIDAVIT OF SERVICE BY MAIL

State of New York,
City of New York,
County of New York, ss.:

ALFRED BUSH, JR., being duly sworn, deposes and says that he is over 18 years of age. That on the 28th day of October, 1976, he served 2 copies of the Reply Brief on Behalf of Petitioner upon:

JOHN ROTHER, ESQ.
National Labor Relations Board
1717 Pennsylvania Avenue
Washington, D. C.

By depositing 2 copies of the same securely enclosed in a post-paid wrapper in a branch depository maintained and exclusively controlled by the United States Post Office at Canal & Church Streets, N.Y.C., addressed to said attorney for the above named, that being the address within the state designated by them for that purpose upon the preceding papers as the place where they regularly kept office and at which place they regulary received mail.

Sworn to before me this
28th day of October, 1976

Sylvia Morris

SYLVIA MORRIS
Notary Public, State of New York
No. 31-4526651
Qualified in New York County
Commission Expires March 30, 1978

Alfred Bush, Jr.

ALFRED BUSH, JR.